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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 CAROL ANN AGSTER, personal) CV 02-1686-PHX-JAT
10 representative of the Estate of CHARLES)
11 J. AGSTER, III, deceased; CHARLES J.)
12 AGSTER, JR., and CAROL ANN)
13 AGSTER, surviving parents of CHARLES)
14 J. AGSTER, III,
15)
16 Plaintiffs,
vs.
Betty Lewis, et al.,
Defendants.

)

17 Pending before the Court is Nurse Betty Lewis' Motion for Remittitur (Doc. #660).
18 Nurse Lewis seeks a reduction in the punitive damages award against her from \$2,000,000
19 to \$540,000. Plaintiffs respond and argue that the Court cannot grant Nurse Lewis the relief
20 she seeks because it would not affect the amount Plaintiffs will receive. Plaintiffs go on to
21 state that Plaintiffs and Nurse Lewis have entered into a settlement agreement, Plaintiffs have
22 been paid, and no order from the Court will change this result. Therefore, Plaintiffs conclude
23 that any order the Court would issue would constitute an advisory opinion.

24 Nurse Lewis replies and does not contest these facts. However, she maintains that she
25 has a due process right to have the punitive damages award against her considered and
26 reduced. Specifically, she argues that she will have consequences from the Court's order,
27 including her future ability to obtain employment and her future ability to obtain malpractice
28 insurance. Nurse Lewis does not dispute, however, Plaintiffs' argument that any order of this

1 Court will not affect the outcome of the litigation between Plaintiffs and Nurse Lewis. See
2 Nurse Lewis' Reply (Doc. #727), footnote 1 and footnote 3.

3 Based on this state of the record, the Court agrees with Plaintiffs that any order this
4 Court would issue on the merits of whether the punitive damages assessed against Nurse
5 Lewis violated her due process rights would be an advisory opinion. As Plaintiffs note, the
6 Court of Appeals has held, "[w]here parties enter into a settlement that resolves all
7 outstanding disputes, we are unable to grant effective relief and the case becomes moot."
8 *DHX, Inc. v. Allianz AGF MAT, Ltd.*, 425 F.3d 1169, 1174 (9th Cir. 2005) (J. Beezer
9 concurring).

10 The Court finds any disputes between Nurse Lewis and Plaintiffs to be moot as a
11 result of their settlement agreement. To the extent Nurse Lewis had further individual
12 interests in the case beyond those addressed by the settlement agreement, her rights to pursue
13 those interests would have had to have been preserved in the settlement agreement and they
14 were not.¹

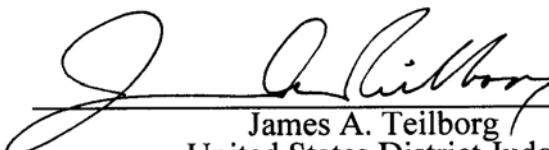
Finally, the Court is unpersuaded by Nurse Lewis' argument that the settlement agreement is "illegal and void" on public policy grounds if the agreement precludes her from asserting a due process challenge to the jury's punitive damages award. Any time parties settle a case before trial, they waive a constitutional right to trial by jury; this fact does not make all settlement agreements void on public policy grounds. In other words, the fact that a settlement agreement settles away rights a party would otherwise have, even constitutional rights, does not make the agreement void for public policy reasons. Moreover, Nurse Lewis is not trying to void the agreement, which would be the remedy if the agreement violated public policy; instead she is trying to challenge the collateral consequences of the agreement. Thus, in addition to finding the settlement agreement is enforceable, the Court finds the remedy Nurse Lewis seeks to be inappropriate even if the agreement was void.

¹ And, even to the extent a right to challenge an award was preserved in the settlement agreement, it would still have had to present an actual case or controversy before this Court.

1 Accordingly,

2 **IT IS ORDERED** that Nurse Lewis' Motion for Remittitur (Doc. #660) is denied.

3 DATED this 22nd day of November, 2006.

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6 James A. Teilborg
7 United States District Judge
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